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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,700	02/16/2001	Robert M. Szabo	6169-156	4280

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EXAMINER

LAstra, DANIEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,700

Applicant(s)

SZABO ET AL.

Examiner

DANIEL LASTRA

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-24 have been examined. Application 09/785,700 (METHOD AND APPARATUS FOR STIMULATING COMMERCE) has a filing date 02/16/01.

Response to Amendment

2. In response to Non Final Rejection filed 12/10/2004, the Applicant filed an Amendment on 04/11/2005, which amended claims 1-6, 10, 13 and 15-22.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardenswartz et al (U.S. 6,055,573) in view of Deaton (US 6,611,811).

As per claims 1, 11, 12 and 16, Gardenswartz teaches:

A method of providing promotional material to consumers comprising:

establishing a computer communications session between the merchant computer system and a third-party remote shopping stimulation system (see Gardenswartz figure 1, column 3, lines 30-60; column 7, lines 54-62), *wherein the merchant request is conveyed to the third party shopping stimulation system* (see Gardenswartz column 14, lines 25-67) ;

said third-party remote shopping stimulation system reading consumer purchase information from said merchant computer system, said consumer purchase information

Art Unit: 3622

comprising consumer identifying information and product information (see Gardenswartz column 13, lines 12-50);

based *at least in part* on said consumer purchase information, identifying one or more *potential* consumers (see column 15, lines 5-40) *the at least one merchant specified product* (see Gardenswartz column 16, lines 40-45);

in said third-party remote shopping stimulation system, associating said promotional material corresponding to said *at least one merchant specified product* with said identified consumers (see Gardenswartz column 15, lines 5-65); and

making said promotional material available to said identified consumers using a promotional material delivery system (see Gardenswartz column 15, lines 40-55).

Gardenswartz does not expressly teach *a merchant computer system generating a merchant request to stimulate commerce for at least one merchant specified product*. However, Deaton teaches a system where merchants place a request to target advertisements and promotions to consumers (see column 101, lines 30-47). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gardenswartz's participating merchants (i.e. stores 2, 4, 6, see Gardenswartz column 14, lines 29-40) would use the Deaton system to target advertisements and promotions to consumers, which would stimulate said consumers to visit and purchase products from said merchants (i.e. value contract; see Gardenswartz column 14, lines 50-67). This feature would allow merchants to deliver promotions or advertisements to users based upon said merchants' business situation.

As per claims 2 and 17, Gardenswartz teaches:

The method of claim 1, said identifying step further comprising determining a product consumption rate from said consumer purchase information to identify said one or more potential consumers” *of the least one merchant specified product* (see column 15, lines 19-40), but fails to teach *wherein the product consumption rate is used to determine that a previously purchase product is due to be replaced or upgraded*. However, Applicant’s specification page 22, lines 13-22 teaches “The CSS can track the purchase history of a consumer relating to one or more products to determine product consumption rate information. Product consumption rate information can be the elapsed time between consecutive purchases of equivalent, similar, or related products from a single merchant or merchant entity as calculated from the consumer information within the purchase history database. Although a product may not have expired, the CSS can determine that a consumer may need a replacement, upgrade, or other equivalent or similar product... For example, if the product is shampoo, the consumer will likely need a replacement within a time period of several months even though the shampoo can have a shelf life of several years”. Deaton teaches “A more sophisticated embellishment of that concept is to track the consumption rate per customer ID, so that the store knows what the single woman living alone consumption rate is for clothes washing detergent vis-a-vis the family of seven. Because for each there is a different buying cycle to be sure, but also there is a different consumption rate. It is the consumption rate that is very important to determine, not the buying cycle, because the buying cycle is largely determined or influenced by what size is bought. The woman living alone might have a 8 month buying cycle because she buys a tub of clothes washing detergent but uses

Art Unit: 3622

very little. So, if the store obtains the consumption rate of a product group, then the store can obtain a much more refined criteria by which to judge the individual ID or customer ID or individual household. The store or manufacturer of a product can thus structure an inducement based on the customer's consumption rate. It may be inappropriate to give the single woman an inducement 50.cent. off a 5 lb. can of Folgers when that is a two year supply for her. So, it is important to establish the consumption rate for an individual ID and or household and then set up a criteria with respect to an individual manufacturer's product group. While a customer is consuming from this general group of products, "X" amount per week, the customer is detected as consuming very little of a particular manufacturer's product. The store can then incent that customer because he is an infrequent customer to the particular product. The incentive can be based on something that is appropriate to the customer's consumption rate" (see column 100, lines 46-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gardenswartz would use a consumer's consumption rate to target advertisements to said consumer for products that said consumer's consumption rate indicate a need for replacement, as taught by Deaton. This feature would allow the Gardenswartz system to track perishable and non-perishable products and send corresponding incentives to a consumer when the next due date to purchase a type of product arrives based upon said consumer's consumption rate analysis.

As per claims 3, 13 and 18, Gardenswartz teaches:

The method of claim 1, *wherein said promotional material and said consumer purchase information include person to person transactions and Internet-based transactions* (see Gardenswartz column 9, lines 25-40; column 2, lines 20-55).

As per claims 4, 10, 14, 15 and 19 Gardenswartz teaches:

The method of claim 1, but fails to teach wherein each said step is performed responsive to *the merchant system* detecting a business necessity, *wherein said business necessity is at least one of an associated merchant having excess inventor and an associated merchant experiencing a revenue shortfall*. However, Deaton teaches a system where merchants target advertisements to customers based upon said merchants business situation (i.e. revenue shortfall; see column 101, lines 30-46). Gardenswartz teaches in column 15, lines 5-16 the concept of values contracts which requires a customer to purchase certain amount of products from a merchant to fulfill said contract and receive an award. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gardenswartz's participating merchants (i.e. stores 2, 4, 6, see Gardenswartz column 14, lines 29-40) would use the Deaton system to target advertisements and promotions to consumers based upon said merchants' business situation (i.e. surplus or shortfall of revenues), which would stimulate said consumers to visit and purchase products from said merchants (i.e. value contract; see Gardenswartz column 14, lines 50-67) This feature would allow merchants to deliver promotions or advertisements to users based upon said merchants business situation.

As per claims 5 and 20, Gardenswartz teaches:

The method of claim 1, wherein said consumer purchase information is read from a purchase history database comprising consumer purchase information for a plurality of different merchants (i.e. stores 2, 4, 6, see Gardenswartz column 14, lines 29-40; column 6, lines 1-12), but fails to teach *and wherein the third-party remote shopping stimulation system responds to merchant requests from said plurality of different merchants*. However, Deaton teaches a system where merchants place a request to target advertisements and promotions to consumers (see column 101, lines 30-47). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gardenswartz's participating merchants (i.e. stores 2, 4, 6, see Gardenswartz column 14, lines 29-40) would use the Deaton system to target advertisements and promotions to consumers, which would stimulate said consumers to visit and purchase products from said merchants (i.e. value contract; see Gardenswartz column 14, lines 50-67). This feature would allow merchants to deliver promotions or advertisements to users based upon said merchants' business situation.

As per claims 7 and 22, Gardenswartz teaches:

The method of claim 1, but fails to teach said product information comprising product expiration information and product identifying information wherein said step of identifying one or more *potential* consumers of products is based upon the expiration information of products. However, Deaton teaches "A consumption rate analysis is performed based on historical product purchases. Non-perishable products that may typically be consumed over a period of more than one week are analyzed to determine the rate in which they are consumed for each ID. This consumption rate is compared

with the date of last purchased so that a prediction of next purchase may be made" (see Deaton column 70, lines 4-25; column 90; column 118, lines 52-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gardenswartz would make a consumption rate analysis for perishable products, which typically need to be consumed in less than one week, such as milk, and would transmit incentives to customers for such perishable products, when the product expiration is due, as taught by Deaton. This feature would allow the Gardenswartz system to track perishable and non-perishable products and send corresponding incentives when the next due date to purchase a type of product arrives.

As per claims 6 and 21, Gardenswartz teaches:

The method of claim 1, wherein said *at least one merchant specified products* include services (see column 14, lines 50-67).

As per claims 8 and 23, Gardenswartz teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in electronic format (see column 15, lines 40-47).

As per claims 9 and 24, Gardenswartz teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in printed format (see column 4, lines 25-45).

Response to Arguments

4. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 571-272-6724. The Examiner's Right Fax number is 571-273-6720.

Art Unit: 3622

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel Lastra
June 11, 2005



RETTA YEHDEGA
PRIMARY EXAMINER